

REMARKS

I. Status of the Claims

Claims 1, 3, and 5-16 are all the claims in the application. By this Amendment, Applicant amends **claims 1, 11, and 13** for clarity and adds new **claim 16**. No new subject matter has been entered.

The support for amendments and new claim 16 can be found in the published application no. 2010/0151085, for example, in paragraphs 38 and 45 and in FIG. 2.

II. Office Action Summary

Claims 11 and 13-15 are rejected under 35 U.S.C. § 112, first paragraph.

Claims 1, 3, and 7-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayhurst (U.S. Patent No. 3,156,352) in view of Navarro (U.S. Patent No. 6,589,578), Tuazon (EP 545025), Melnick (GB 1253271), Richards (EP 1201562), Acknin (U.S. Patent No. 5,962,052), and AAPA (Applicant's Admission of Prior Art in background of the current application).

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayhurst, Navarro, Tuazon, Melnick, Richards, Acknin, and AAPA in view of Yiazis (U.S. Patent Application Publication No. 3,156,352).

III. Preliminary Matter

Applicant thanks the Examiner for indicating acceptance of the drawings.

IV. Claims Rejections under 35 U.S.C. § 112

Claims 11 and 13-15 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

A. The Examiner states that the original disclosure does not contain support for "non-breakable weld" recited in claim 11. (See Final Office Action, page 2).

Claim 11 has been amended to obviate the rejection. It is respectfully requested this ground of rejection of claim 11 be withdrawn.

B. Claim 13 recites: “the first and second compartments each has a shorter dimension and a longer dimension and are stacked one after another in a direction of the longer dimensions, and the pressure-breakable welded seam extends from the second compartment to the first compartment in the direction of the longer dimensions.”

The Examiner states that the original disclosure does not contain support for the above-recited features of claim 13. (*See* Final Office Action, bridging paragraph at pages 2-3).

To satisfy the written description requirement under the first paragraph of 35 U.S.C. § 112, a specification must describe the claimed invention in sufficient detail so that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. (MPEP § 2163). For newly added claim limitations, the MPEP requires that the specification provide support through express, implicit, or inherent disclosure. Applicant respectfully submits that such disclosure is present in the specification.

As seen in a direction from a bottom to a top of FIG. 2, each of illustrated two compartments has a shorter dimension and a longer dimension. An upper compartment containing dried egg is disposed above the lower compartment containing water. That is, the compartments are stacked one above another in a direction of their longer dimensions. Further, the pressure-breakable welded seam extends from the lower compartment to the upper compartment in the direction of the longer dimensions.

As such, the present application provides explicit support of the features recited in claim 13. Additionally, claim 13 has been amended to clarify the matters for the Examiner.

Accordingly, it is respectfully submitted the rejection of claim 13 is overcome and respectfully requested the rejection of claims 13-15 be withdrawn.

V. Claims Rejections under 35 U.S.C. § 103

A. Claims 1, 3, and 7-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayhurst in view of Navarro, Tuazon, Melnick, Richards, Acknin, and AAPA.

Claim 1 recites among other elements: “first and second compartments which are separated from one another by a pressure-breakable welded seam which extends along an entire

width of the bag, a pre-determined quantity of dried egg being housed in the first compartment, and a pre-determined quantity of water being housed in the second compartment, and the pressure-breakable welded seam is configured to be broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam.”

The Examiner states that the heat seal is a welded seam and that the Hayhurst’s heat seals are considered “pressure-breakable.” (*See* Final Office Action, page 7, paragraph 2).

Hayhurst describes a package with the compartments disposed side by side, with the heat seal extending in between two compartments. (FIGS. 1, 13). Tabs 13a and 13b are provided on both sides of the package so that the seal 14 can be opened by pulling the tabs. (Col. 2, lines 13-43).

Therefore, Hayhurst clearly describes breaking the heat seal by the tabs, by pulling the tabs in opposite directions, so that the seal is disrupted. Two forces are used to break the seal which are opposite one to the other. The heat seal of Hayhurst is not intended to be broken by a pressure, as asserted by the Examiner.

Therefore, the heat seal of Hayhurst is not the same as or an equivalent of the claimed pressure-breakable welded seam which could be broken by exerting pressure on the water in the second compartment and, thus, exerting a force inside the bag on the pressure-breakable welded seam, as claimed.

According to exemplary embodiments, the seam is broken due to the force exerted by the liquid on only one side of the seam. Therefore, only one force in one direction is used to break the seam. The forces used to break the seam are different from those of Hayhurst. Additionally, the plastic used in Hayhurst should be strong enough so that the tabs resist when the user pulls the tabs manually. This involves more plastic in each layer, so the whole product and procedure is more complex and expensive. Hayhurst further needs an empty space between the compartments, therefore more material is needed to store the same quantity of product.

Further, Hayhurst explicitly **teaches away** from the claimed “a pressure-breakable welded seam which ... is configured to be broken by exerting pressure on the water in the second

compartment and exerting a force inside the bag on the pressure-breakable welded seam,” and from the Examiner’s proposed combination.

MPEP § 2141.02 states that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” Where the prior art criticizes, discredits, or otherwise discourages the solution claimed, the prior art constitutes a teaching away. *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). Where the cited art teaches away from a claimed feature, the cited art is not available for the purposes of an obviousness rejection.

In the instant case, Hayhurst not only fails to teach or suggest “first and second compartments which are separated from one another by a pressure-breakable welded seam which ... is configured to be broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam,” but further teaches away from the use thereof.

Specifically, Hayhurst explicitly criticizes using the pressure-breakable seals as being difficult in controlling the applied force and causing inconvenience and fear to customers. (Col. 1, lines 27-37). Accordingly, the gist of Hayhurst’s disclosure is to provide two tabs on both sides of the package so that the heat seal between the compartments is separated by pulling the tabs 13a and 13b. (Col. 2, lines 13-43).

Therefore, because Hayhurst actively criticizes the solution provided by claim 1 and provides the solution which cures the deficiencies of the pressure-breakable seam, Hayhurst *explicitly teaches away* from the claimed “a pressure-breakable welded seam which ... is configured to be broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam.”

Because Hayhurst **teaches away** from “a pressure-breakable welded seam which ... is broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam,” **Hayhurst does not support an obviousness rejection.** MPEP § 2141.02. One of ordinary skill in the art would not have been motivated to modify Hayhurst to incorporate certain features of Richards, Navarro, Tuazon, Melnick, and AAPA to arrive at the subject matter of claim 1.

Richards was not relied on by the Examiner to teach the above-discussed features of claim 1 and, as such, does not cure any above-discussed deficiency of Hayhurst.

However, Applicant respectfully submits that Richards does not teach “a pressure-breakable welded seam which ... is broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam.”

That is, Richards does not mention how to break the frangible seal or about the frangible seal. Except that in the description of the embodiment of figure 3, Richards describes that the tearable seal (318) and the frangible seal (350) are located adjacent to each other such that pressure to open the tearable seal will break the frangible seal. However, this teaching does not correspond to the claimed “a pressure-breakable welded seam which ... is broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam.”

Navarro, Tuazon, and Melnick were relied on by the Examiner to teach the dried eggs. (*See* Non-Office Action, page 3, lines 1-2). As such, these references do not cure any above-discussed deficiency of Hayhurst or Richards.

Acknin was relied on by the Examiner to teach compartmented containers which store separately dry edibles and water, with a partition therebetween openable to allow the products to mix. (*See* Non-Office Action, page 3, lines 2-6). As such, Acklin does not cure any above-discussed deficiency of Hayhurst or Richards.

AAPA was relied on by the Examiner to teach the rupturable compartment divider. (*See* Non-Office Action, page 3, lines 1-2). As such, AAPA does not cure any above-discussed deficiency of Hayhurst or Richards.

Accordingly, Applicant respectfully submits that the Examiner’s proposed combination does not teach or suggest at least “first and second compartments which are separated from one another by a pressure-breakable welded seam which extends along an entire width of the bag, a pre-determined quantity of dried egg being housed in the first compartment, and a pre-determined quantity of water being housed in the second compartment, and the pressure-breakable welded seam is configured to be broken by exerting pressure on the water in the second compartment and exerting a force inside the bag on the pressure-breakable welded seam,”

and also there is no suggestion under the *KSR* guidelines to perform the Examiner's proposed combination.

It is, therefore, respectfully requested that **claim 1 and dependent claims 3 and 7-15** are patentable.

B. Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayhurst, Navarro, Tuazon, Melnick, Richards, Acknin, and AAPA in view of Yiazis.

Claims 5 and 6 depend from claim 1. As shown above, Hayhurst, Navarro, Tuazon, Melnick, Richards, Acknin, and AAPA do not teach all of the features of claim 1. Yiazis does not cure any above-discussed deficiency of these references. It is, therefore, respectfully submitted that **dependent claims 5 and 6** are patentable at least by virtue of their dependencies.

VI. New Claim

Applicant adds new **claim 16** which is patentable at least by virtue of its dependency and/or additional features set forth therein.

CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.116
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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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